

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
GUTIÉRREZ CALIXTO,	:	
	:	
Plaintiff,	:	
	:	22 Civ. 7471 (LGS)
-against-	:	
	:	<u>ORDER</u>
M & M FRUIT INC., et al.,	:	
Defendants.	:	
-----X	:	

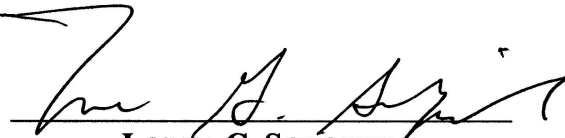
LORNA G. SCHOFIELD, District Judge:

WHEREAS, the Order dated April 6, 2023, required Plaintiff's counsel to file supporting evidence permitting this Court to approve the settlement as fair and reasonable consistent with the holding in *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199, 206 (2d Cir. 2015).

WHEREAS, Plaintiff correctly notes that an offer of judgment made pursuant to Fed. R. Civ. P. 68(a) is not subject to the *Cheeks* fairness inquiry, which is "limited to Rule 41(a)(1)(A)(ii) dismissals with prejudice." *See Mei Xing Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 411 (2d Cir. 2019); *accord Morse v. Warren & Panzer Eng'rs, P.C.*, 2022 WL 16948554, at \*2 (S.D.N.Y. Nov. 15, 2022). It is hereby

**ORDERED** the memo endorsement dated April 6, 2023 (Dkt. No. 32) is vacated. Judgment consistent with the parties' proposed Fed. R. Civ. P. 68 judgment will issue separately.

Dated: April 14, 2023  
New York, New York

  
LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE